XI-HC-22

(46)

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 268/2006 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

APPELLANT — Ashok Kumar, aged 22 years, son of late Shri Mahetara Kurmi, resident of village Bandha, P.S. Lalpur, Distt Bilaspur (CG)

Vs.

RESPONDENT — State of Chhattisgarh, through P.S. Lalpur, Distt. Bilaspur (CG)

13-9-2007

Shri Somnath Verma, Advocate for the appellant.

Shri Neeraj Mehta, Panel Lawyer for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 30-3-2006 passed in S.T. No. 250/2005 whereby learned Additional Sessions Judge, Mungeli has convicted the appellant under Sections 366 and 376 of I.P.C. and sentenced him to undergo R.I. for three years with fine of Rs. 300/- and to undergo R.I. for 5 years with fine of Rs. 500/- respectively. In default of payment of fine of Rs. 300/- and Rs. 500/-, the appellant has been directed to further undergo R.I. for 3 months and 5 months respectively. Both the sentences have been directed to run concurrently.

3. The allegation against the appellant is that on 17-4-2005 at about 10.00 in the night, he enticed the minor prosecutrix P.W. 1 daughter of Santosh Kurmi (P.W. 2) from lawful custody of her father with an intention to compel her for illicit sexual intercourse and thereafter raped her with active assistance of co-accused Ramkumar and Satvantin Bai. Missing report No. 3/2005 was lodged by the father of the prosecutrix on 18-4-2005. Thereafter the prosecutrix was recovered from the house of Satvantin Bai on 1-5-2005 from village Bundeli. After recovery of the prosecutrix,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

F.I.R. of Ex. P-20 was registered on 1-5-2005. During investigation, the prosecutrix was sent for medical examination to C. H. C., Lormi vide Ex. P-16A where Dr. (Smt.) Pramila Dau (P.W. 13) examined her and gave her report of Ex. P-16. The prosecutrix was also sent for ossification test to District Hospital, Bilaspur where Dr. S. Chatterjee (P.W. 12) examined her and gave his report of Ex. P-15. A copy of admission registered of Ex. P-19 was taken into possession vide seizure memo of Ex. P-22 from Phoolchand Rathore, Head Master of the Primary School, Vicharpur. After completing the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Mungeli.

4. After committal, charge under Sections 366 and 376 of I.P.C. was framed against the accused. During trial the prosecution examined 16 witnesses. The appellant in his statement recorded under Section 313 of Cr.P.C. pleaded innocence and false implication. However, learned trial Court convicted and sentenced the appellant as mentioned above.

5. Learned counsel for the appellant submits that the trial Court has held the prosecutrix to be below 16 years of age on the basis of document of Ex. P-19 being the entry of the prosecutrix in school admission register in which the date of birth of the prosecutrix is shown to be 18-9-1990, however from the evidence of Phoolchand (P.W. 14) it would be evident that the document is doubtful as there are number of overwriting present in the register and which have been admitted by this witness and there is no explanation for the same. The above register was in fact in the custody of Ramnath, the maternal grand-father of the prosecutrix and it is stated that he has made the entry in the said register. He further submits that the radiologist has

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assessed the age of the prosecutrix 15 to 16 years and there is possibility of margin of 2-3 years in either side and therefore, if the report of the radiologist is taken to be correct, in that case also, the age of the prosecutrix being above 18 years cannot be ruled out. Further referring to the statement of the prosecutrix and her conduct, it has been argued that the prosecutrix was a consenting party as she accompanied the appellant voluntarily and visited various places with him.

6. On the other hand, learned counsel for the State submitted that the age of the prosecutrix has been duly established by the prosecution from the admission register of the school as well as from the ossification test. The father of the prosecutrix namely Santosh (P.W. 2) has also given date of birth of the prosecutrix to be 18-9-1990 and the incident occurred on 17-4-2005. Thus on the date of incident, the prosecutrix was less than 15 years old. The date of birth is duly proved by the statement of father of the prosecutrix which also finds mention in document of Ex. P-19. Apart from that, the radiologist has assessed the age of the prosecutrix 15-16 years which also confirms the date of the birth given by father of the prosecutrix and therefore, only because of some overwriting present in the admission register, the evidence regarding age of the prosecutrix cannot be discarded. So far as the argument relating to consent of the prosecutrix is concerned, the prosecutrix was admittedly minor at the time of incident. She was also below 16 years, therefore, consent, if any, is of no help to the appellant.

7. I have heard learned counsel for the parties. I have perused the record as also the impugned judgment.

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8. It is true that the document of Ex. P-19 contains un-explained overwriting and even the overwriting have not been initialed by the person making entry in the register. The entries have been admittedly made by Ramnath, Assistant Teacher but he is already dead and document has been proved by P.W. 14 Phoolchand Rathore, Head Master of the School who was also Head Master of the school at the time when the entry was made and he has proved the signature of Ramnath who had made entry in the register. P.W. 2 Santosh is father of the prosecutrix and as such best witness to state the date of birth of his daughter and this witness in para 7 of his deposition has categorically stated that the date of birth of his daughter is 18-9-1990. He has further stated that he got her daughter admitted in the school and signed the admission register and thus the entry in the column of date of birth of the register has been mentioned as per the information given by the father of the prosecutrix and therefore, the version of P.W. 2 Santosh finds mention in the admission register and thus overwriting present in the admission register shall not impeach the credibility of the father of the prosecutrix who had given the exact date of birth of his daughter. Even otherwise the radiologist has assessed the age of the prosecutrix between 15-16 years on the basis of X-ray report and this also confirms the statement of the father that the prosecutrix was about 15 years old at the time of incident. Therefore, this Court is of the opinion that the trial Court has not committed any illegality in arriving at a conclusion that at the time of the incident, the prosecutrix was 14 years and 8 months of age.

9. Now coming to the question of consent of the prosecutrix. It is true that if the evidence of the prosecutrix is read as a whole, it appears that she accompanied the accused to various places and resided with him of her own freewill, however looking

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to the age of the prosecutrix that she was less than 15 years old at the time of incident, her consent, if any, is of no consequence. The prosecutrix has categorically stated that she was subjected to sexual intercourse by the accused number of times and she resided with him and considering that the age of the prosecutrix was below 16 years at the time of incident, this Court is of the considered opinion that conviction of the appellant under Sections 366 and 376 of I.P.C. is strictly in accordance with law. Since the accused has already been sentenced to undergo R.I. for 5 years which is less than the minimum sentence prescribed under Section 376 of I.P.C. therefore, this Court is of the opinion that the impugned judgment of conviction and order of sentence passed by the Court below does not call for any interference.

10. The appeal being devoid of substances is liable to be dismissed and it is accordingly dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

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